IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re the Application of:	Atty. Docket No.:	007287.00015
Yakov KAMEN et al.		
Confirmation No.: 6955		
Application No.: 10/008,229	Group Art Unit:	2623
Filed: November 30, 2001	Examiner:	Raman, Usha
For: METHOD AND SYSTEM FOR CONTENT BASED BROADCASTED PROGRAM SELECTION		

APPEAL BRIEF

U.S. Patent and Trademark Office
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Sir:

This is an Appeal Brief filed in support of Appellants' Notice of Appeal filed herewith. Appeal is taken from the Final Office Action mailed July 23, 2008 (hereafter, "Final Office Action"), and the Advisory Action mailed November 19, 2008.

Please charge any fees to Deposit Account No. 19-0733. In addition, any extensions of time necessary for acceptance or entry of this paper are hereby requested.

REAL PARTY IN INTEREST
37 C.F.R. § 41.37(c)(1)(i)

The owner of this application, and the real party in interest, is JLB Ventures, LLC.

RELATED APPEALS AND INTERFERENCES
37 C.F.R. § 41.37(c)(1)(ii)

There are no related appeals or interferences.

STATUS OF CLAIMS
37 C.F.R. § 41.37(c)(1)(iii)

Claims 1-17, 19, and 20 are rejected and presently appealed.

STATUS OF AMENDMENTS
37 C.F.R. § 41.37(c)(1)(iv)

Claim 1 was amended in the Amendment and Request for Reconsideration filed October 23, 2008 to correct a typographical error. The Advisory Action indicates that the amendment has been entered.

SUMMARY OF CLAIMED SUBJECT MATTER
37 C.F.R. § 41.37(c)(1)(v)

In making reference herein to various embodiments in the specification text and/or drawings to explain the claimed invention, Appellants do not intend to limit the claims to those embodiments; all references to the specification and drawings are illustrative unless otherwise explicitly stated. Appellants refer to the patent application publication, U.S. Patent Pub. No. 2002/0083450, for the cited support.

Independent claim 1 is directed to a method a method comprising providing a first set of categories of broadcasted programs. U.S. Patent Publication No. 2002/0083450, Abstract, paragraphs [0007], [0014] and [0015]. The method further comprises providing a second set of categories of broadcasted programs. *Id.* at paras. [0007], [0014] and [0015]. The method further comprises adding a first category from the first set to the second set of categories of broadcasted programs in response to tuning a broadcasted program viewing device to a broadcasted program

fitting into the first category of the first set of categories a predetermined number of times, wherein the predetermined number of times is greater than 1. *Id.* at paras. [0007] and [0015].

Independent claim 7 is directed to one or more computer-readable media storing instructions that, when executed by a processor, cause the processor to perform a method, comprising providing a first set of categories of broadcasted programs. *Id.* at paras. [0007], [0014], [0015], [0026]-[0029]. The method further includes providing a second set of categories. *Id.* The method further comprises adding a first category from the first set to the second set of categories of broadcasted programs in response to tuning a broadcasted program viewing device to a broadcasted program fitting into the first category of the first set of categories a predetermined number of times, wherein the predetermined number of times is greater than. *Id.* at paras. [0007], [0015], [0026]-[0029].

Independent claim 13 is directed to a system comprising a first unit to provide a first set of categories of content of broadcasted programs. *Id.* at paras. [0007], [0014], [0015], [0021] and [0026]-[0029]. The system further includes a second unit coupled with the first unit to add a category from the first set to a second set of categories of broadcasted programs in response to selecting the category from the first set and tuning a broadcasted program viewing device, for a period of time at least equal to a first predetermined threshold, to at least one broadcasted program predetermined to be in the category from the first set, wherein the second unit further includes a user verification wherein a user approves the category from the first set being added to the second set prior to the category being added. *Id.* at paras. [0020] and [0021] and FIG. 4.

GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL
37 C.F.R. § 41.37(c)(1)(vi)

- Claims 1, 5, 7, 11 and 19 stand rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 5,801,747 to Bedard ("Bedard").

- Claims 2 and 8 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Bedard in view of U.S. Patent No. 6,128,009 to Ohkura ("Ohkura").

- Claims 3 and 9 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Bedard in view of U.S. Patent Publication No. 2004/0210932 to Mori ("Mori").

- Claims 4 and 10 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Bedard in view of U.S. Patent No. 6,438,752 to McClard ("McClard").

- Claims 6, 12-14, 17 and 20 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Bedard in view of Ohkura and further in view of U.S. Patent No. 6,301,577 to Matsumoto ("Matsumoto").

- Claim 15 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over Bedard in view of Ohkura, Matsumoto and Mori.

- Claim 16 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over Bedard in view of Ohkura, Matsumoto and McClard.

ARGUMENT
37 C.F.R. § 41.37(c)(1)(vii)

A.   Rejection of Claims 1, 5, 7, 11 and 19 over Bedard

1. Independent Claim 1

Independent claim 1 recites, among other features, adding a first category from the first set to the second set of categories of broadcasted programs in response to tuning a broadcasted program viewing device to a broadcasted program fitting into the first category of the first set of categories *a predetermined number of times*, wherein the predetermined number of times is greater than 1. Applicants respectfully submit that Bedard fails to teach or suggest the features of claim 1.

As discussed in Applicants' Amendment and Request for Reconsideration filed October 23, 2008, Bedard describes a method and apparatus for monitoring television viewing activity to determine preferred categories of programming and preferred channels of a viewer. Abstract. The method and apparatus of Bedard include adding a viewed channel to a list of preferred channels when the channel is viewed for a predetermined amount of time. *See* col. 4, lines 38-40. At most, Bedard describes adding a category to a viewer profile based on viewing *a channel* associated with that category. *See* col. 4, lines 49-65. However, Bedard clearly fails to teach or suggest adding a first *category* from the first set of categories to the second set of *categories* in response to tuning a device to a *broadcasted program* fitting into the first category a predetermined number of times. Rather, Bedard describes adding a category to a viewer profile

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based on a number of times a channel associated with that category has been viewed. According to Bedard, a category will be added only if the channel viewed is associated with that category. *Id.* The category will not be added to a viewer profile if a *broadcast program* in that category is viewed on a channel not associated with that category. *Id.* There is no teaching or suggestion in Bedard of adding a *category* to a set of *categories* based in response to tuning a device to a *program* fitting into the first category.

Further, Bedard fails to teach or suggest adding a category *in response to tuning a device to a broadcasted program fitting into the first category a predetermined number of times,* wherein the predetermined number of times is greater than 1, as recited in claim 1. Instead, Bedard describes adding a channel to the list of channels when the channel is viewed once *for a given period of time. See* col. 5, lines 34-48. A length of viewing time, as described by Bedard, does not constitute a number of times tuned. Further, Bedard describes a system wherein a device may be tuned to a channel more than once but not added to the channel listing because the channel was not viewed for the minimum *time* required.

At most Bedard describes adding a most often viewed channel or category based on viewing a channel associated with that category or a most recently viewed channel or category based on viewing a channel in that category. *See* col. 8, lines 51-63. Applicants respectfully submit that this does not constitute tuning a device to a *program* fitting into the first category a *predetermined number of times.* The Office asserts, in its Response to Arguments associated with the Advisory Action mailed November 19, 2008, that Bedard discloses a system that "monitors the most often viewed categories." However, adding a channel or category as a most often viewed channel or category requires the number of viewings of the *channel* to be compared to viewings of other *channels.* It does not require the number of viewings of a *broadcast program fitting into the first category* to be compared to a predetermined threshold number of times, as recited in claim 1.

2. *Dependent Claims 5 and 19*

Claims 5 and 19 depend from claim 1 and are allowable over the applied reference for at least the same reasons as claim 1.

3. *Independent Claim 7*

Independent claim 7 recites, among other features, adding a first category from the first set to the second set of categories of broadcasted programs in response to tuning a broadcasted program viewing device to a broadcasted program fitting into the first category of the first set of categories a predetermined number of times. These features are similar to features described above with respect to claim 1. As such, claim 7 is allowable over the applied reference for at least reasons substantially similar to those described above with respect to claim 1.

4. *Dependent Claim 11*

Claim 11 depends from claim 7 and is allowable over the applied reference for at least the same reasons as claim 7.

B.   **Rejection of Claims 2 and 8 over Bedard in view of Ohkura**

Claims 2 and 8 depend from claims 1 and 7, respectively, and are allowable over the applied references for at least the same reasons as their respective base claims. The addition of Ohkura fails to cure the deficiencies of Bedard with respect to claims 1 and 7.

C.   **Rejection of Claims 3 and 9 over Bedard in view of Mori**

Claims 3 and 9 depend from claims 1 and 7, respectively, and are allowable over the applied references for at least the same reasons as their respective base claims. The addition of Mori fails to cure the deficiencies of Bedard with respect to claims 1 and 7.

D.   **Rejection of Claims 4 and 10 over Bedard in view of McClard**

Claims 4 and 10 depend from claims 1 and 7, respectively, and are allowable over the applied references for at least the same reasons as their respective base claims. The addition of McClard fails to cure the deficiencies of Bedard with respect to claims 1 and 7.

E. **Rejection of Claims 6, 12-14, 17 and 20 over Bedard in view of Ohkura and Matsumoto**

1. Independent Claim 13

Independent claim 13 recites, among other features, a first unit to provide a first set of categories of content of broadcasted programs and a second unit coupled with the first unit to add a category from the first set to a second set of categories of broadcasted programs *in response to selecting the category* from the first set and *tuning a broadcasted program viewing device,* for a period of time at least equal to a first predetermined threshold, *to at least one broadcasted program predetermined to be in the category* from the first set, wherein the second unit further includes a user verification wherein a user approves the category from the first set being added to the second set prior to the category being added. Applicants respectfully assert that none of Bedard, Ohkura or Matsumoto, alone or in combination, teaches or suggests the features of claim 13.

As discussed in Applicants Amendment and Request for Reconsideration, the Office fails to identify any portion of Bedard, Ohkura or Matsumoto that teaches or suggests a first unit and a second unit. Further, the Office fails to identify any portion of Bedard, Ohkura or Matsumoto that teaches or suggests tuning a broadcasted program viewing device, for a period of time at least equal to *a first predetermined threshold,* to at least one *broadcasted program* predetermined to be in the category from the first set. At most, Bedard describes adding a channel or category to a viewer profile based on viewing the channel or a channel in the category for a predetermined time. There is no teaching or suggestion in any of the cited references of tuning a device to a *program* in that category. Accordingly, Applicants respectfully submit that claim 13 is patentably distinct from the cited combination of references.

2. Dependent Claims 14, 17 and 20

Dependent claims 14, 17 and 20 depend from claim 13 and are allowable over the applied references for at least the same reasons as claim 13.

3. Dependent Claim 6

Dependent claim 6 depends from claim 1 and is allowable over the applied references for at least the same reasons as claim 1. The addition of Ohkura and Matsumoto fails to cure the deficiencies of Bedard with respect to claim 1.

4. *Dependent Claim 12*

Dependent claim 12 depends from claim 7 and is allowable over the applied references for at least the same reasons as claim 7. The addition of Ohkura and Matsumoto fails to cure the deficiencies of Bedard with respect to claim 7.

F.   Rejection of Claim 15 over Bedard in view of Ohkura, Matsumoto and Mori

Dependent claim 15 depends from claim 13 and is allowable over the applied references for at least the same reasons as claim 13. The addition of Mori fails to cure the deficiencies of Bedard, Ohkura and Matsumoto with respect to claim 13.

G.   Rejection of Claim 16 over Bedard in view of Ohkura, Matsumoto and McClard

Dependent claim 16 depends from claim 13 and is allowable over the applied references for at least the same reasons as claim 13. The addition of McClard fails to cure the deficiencies of Bedard, Ohkura and Matsumoto with respect to claim 13.

CONCLUSION

For all of the foregoing reasons, Appellant respectfully submits that the final rejection of claims 1-17, 19, and 20 is improper and should be reversed.

Respectfully submitted,

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CLAIMS APPENDIX
37 C.F.R. § 41.37(c)(1)(viii)

Claims involved in the appeal:

Claim 1: A method comprising:

provide a first set of categories of broadcasted programs;

providing a second set of categories of broadcasted programs; and

adding a first category from the first set to the second set of categories of broadcasted

programs in response to tuning a broadcasted program viewing device to a broadcasted program

fitting into the first category of the first set of categories a predetermined number of times,

wherein the predetermined number of times is greater than 1.

Claim 2.   The method of claim 1, further comprising:

removing a second category from the second set upon a selecting of the second category

from the second set.

Claim 3.   The method of claim 1, further comprising:

removing a second category from the second set upon a broadcasted program viewing

device not being tuned, for a period of time at least equal to a first predetermined threshold, to at

least one broadcasted program predetermined to be in the second category from the second set.

Claim 4.   The method of claim 1, further comprising:

tuning a broadcasted program viewing device to a channel on which a broadcasted

program predetermined to be in a second category from the second set will be broadcasted within

a predetermined threshold of a current time.

Claim 5.   The method of claim 1, further comprising:

tuning a broadcasted program viewing device, upon a singular pressing of a button, to a

channel on which a broadcasted program predetermined to be in a second category from the

second set will be broadcasted within a predetermined threshold of a current time.

Claim 6.   The method of claim 1, further comprising:

verifying the adding of the first category from the first set to the second set including

receiving user input confirming the addition of the first category.

Claim 7.   One or more computer-readable media storing instructions that, when executed by

a processor, cause the processor to perform a method, comprising:

providing a first set of categories of broadcasted programs;

providing a second set of categories; and

adding a first category from the first set to the second set of categories of broadcasted

programs in response to tuning a broadcasted program viewing device to a broadcasted program

fitting into the first category of the first set of categories a predetermined number of times,

wherein the predetermined number of times is greater than

Claim 8.   The one or more computer-readable media of claim 7, wherein the method further

comprises:

removing a second category from the second set upon a selecting of the second category

from the second set.

Claim 9.   The one or more computer-readable media of claim 7, wherein the method further

comprises:

removing a second category from the second set upon a broadcasted program viewing

device not being tuned, for a period of time at least equal to a first predetermined threshold, to at

least one broadcasted program predetermined to be in the second category from the second set.

Claim 10.   The one or more computer-readable media of claim 7, wherein the method further comprises:

tuning a broadcasted program viewing device to a channel on which a broadcasted program predetermined to be in a second category from the second set will be broadcasted within a predetermined threshold of a current time.

Claim 11.   (The one or more computer-readable media of claim 7, wherein the method further comprises:

tuning a broadcasted program viewing device, upon a singular pressing of a button, to a channel on which a broadcasted program predetermined to be in a second category from the second set will be broadcasted within a predetermined threshold of a current time.

Claim 12.   The one or more computer-readable media of claim 7, wherein the method further comprises:

verifying the adding of the first category from the first set to the second set including receiving user input confirming the addition of the first category.

Claim 13.   A system comprising:

a first unit to provide a first set of categories of content of broadcasted programs; and

a second unit coupled with the first unit to add a category from the first set to a second set of categories of broadcasted programs in response to selecting the category from the first set and tuning a broadcasted program viewing device, for a period of time at least equal to a first predetermined threshold, to at least one broadcasted program predetermined to be in the category from the first set, wherein the second unit further includes a user verification wherein a user approves the category from the first set being added to the second set prior to the category being added.

Claim 14.   The system of claim 13, wherein the second unit is also to remove a category from the second set upon a selecting of the category from the second set.

Claim 15.   The system of claim 13, wherein the second unit is also to remove a category from the second set upon a broadcasted program viewing device not being tuned, for a period of time at least equal to a second predetermined threshold, to at least one broadcasted program predetermined to be in the category from the second set.

Claim 16.   The system of claim 13, wherein the second unit is also to tune a broadcasted program viewing device to a channel on which a broadcasted program predetermined to be in a category from the second set will be broadcasted within a predetermined threshold of a current time.

Claim 17.   The system of claim 13, wherein the second unit is also to tune a broadcasted program viewing device, upon a singular pressing of a button, to a channel on which a broadcasted program predetermined to be in a category from the second set will be broadcasted within a predetermined threshold of a current time.

Claim 19.   The method of claim 1, wherein the first and second sets are located in a set top box.

Claim 20.   The system of claim 13, wherein the first and second units are located in a set top box.

EVIDENCE APPENDIX
37 C.F.R. § 41.37(c)(1)(ix)

NONE.

RELATED PROCEEDINGS APPENDIX
37 C.F.R. § 41.37(c)(1)(x)

NONE.